

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 25, 2003

IN RE:

INCLUSION OF TENNESSEE'S DO-NOT-CALL
REGISTRY IN THE NATIONAL DO-NOT-CALL
DATABASE

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DOCKET NO.
03-00390

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, Director Pat Miller, and Director Ron Jones of the Tennessee Regulatory Authority (the "TRA" or "Authority"), at a specially scheduled Authority Conference held on June 23, 2003, to consider a request by the Federal Trade Commission ("FTC") that the TRA share with the FTC the telephone numbers on Tennessee's Do-Not-Call Registry for inclusion in the National Do-Not-Call Registry.

Background

The Tennessee General Assembly created the State's Do-Not-Call Program in 1999 by enacting Tenn. Code Ann. § 65-4-401 *et seq.*, which charged the TRA with the creation of a registry of Tennessee residential telephone subscribers who object to receiving telephone solicitations. To date, over 850,000 Tennessee households have registered with the TRA for inclusion in the state Do-Not-Call Program. Tennessee is one of twenty-seven states that have adopted state telemarketing regulations to establish a Do-Not-Call program. The FTC has now promulgated rules for the creation of a national Do-Not-Call program,¹ pursuant to the requirements of the federal Telemarketing and Consumer Fraud and Abuse Prevention Act.² In

¹ 16 C.F.R. § 310.01 *et seq.*

² 15 U.S.C. § 6101 *et seq.*

order to facilitate the creation of the national database, the FTC requested that Tennessee share the information in its Do-Not-Call Registry for inclusion in the national database.

The June 23, 2003 Authority Conference

At the June 23, 2003 Authority Conference, the Directors addressed both the legal and policy implications of the FTC's request. For this purpose, Russell Perkins, Deputy of the Consumer Advocate and Protection Division, and Larry Lewis, Deputy of the Tax Division, both of the Tennessee Attorney General's Office, were in attendance. Participating by telephone was David Torok, FTC Program Manager for the National Do-Not-Call Program.

The legal question at issue was whether the TRA is authorized to release to the FTC the requested information in Tennessee's Do-Not-Call Registry in light of Tenn. Code Ann. § 65-4-405(c)³ and the confidentiality requirements of Tenn. Code Ann. § 65-4-405(e). The Directors decided to request a formal Attorney General's Opinion on this question.

Eddie Roberson, Chief of the TRA's Consumer Services Division, addressed the possible impact of the national program on Tennessee's Do-Not-Call Program. Among the concerns raised was the potential decline in compliance with Tennessee's registration requirements for telemarketers under Tenn. Code Ann. § 65-4-405(d)(1), compromising the protection provided to Tennessee consumers and reducing the state revenue currently generated by the Tennessee Program. Following deliberation, the Directors voted unanimously to condition sharing the requested information upon the FTC's assurance to the TRA that Tennessee-specific information will be shared with only those telemarketers who confirm their compliance with the registration requirements of Tenn. Code Ann. § 65-4-405(d)(1). The decision to share the information is further

³ Tenn. Code Ann. § 65-4-405(c) reads as follows:

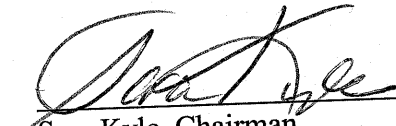
If, pursuant to 47 U.S.C. § 227(c)(3), the federal communications commission, establishes a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, the authority shall include the part of such single national database that relates to Tennessee in the database established under this part.

47 U.S.C. § 227(c)(3) was passed in 1991, authorizing the FCC to establish a national database of residential telephone subscribers objecting to telephone solicitations. Only recently the FCC promulgated rules to work in conjunction with Do-Not-Call Program created by the FTC under its own statutory authority.

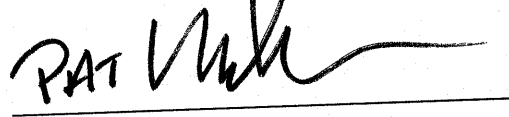
conditioned on a favorable opinion from the Tennessee Attorney General's Office stating that the sharing of the telephone numbers in the Tennessee Do-Not-Call Registry is consistent with the requirements of Tenn. Code Ann. § 65-4-405(c) & (e).

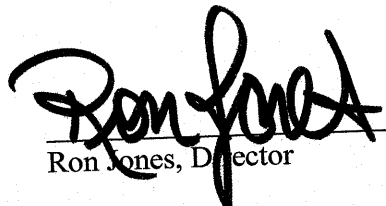
IT IS THEREFORE ORDERED THAT:

1. The General Counsel request in writing a formal opinion from the Tennessee Attorney General's Office as to whether the TRA has the authority to release to the FTC the requested information in Tennessee's Do-Not-Call Registry in light of Tenn. Code Ann. § 65-4-405(c) and the confidentiality requirements of Tenn. Code Ann. § 65-4-405(e); and
2. Subject to the legal opinion provided by the Tennessee Attorney General's Office, the requested information from Tennessee's Do-Not-Call Registry will only be released to the FTC on the condition that the FTC first provides assurance to the TRA that Tennessee-specific information will be shared with only those telemarketers who confirm their compliance with the registration requirements of Tenn. Code Ann. § 65-4-405(d)(1).


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director


Ron Jones, Director